

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3095 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RANI SAHEBA PADMAKUVARBA VIJAYSINHJI CHAUHAN

Appearance:

MR AD OJA, GOVERNMENT PLEADER, with Mr ND Gohil, AGP for Appellant
MR PR THAKKAR for Respondent

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 04/12/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. P.R. Thakkar appears for the respondent-original claimant and waives service of notice in the appeal. On a joint request of learned counsel for the respective parties this appeal is taken up for final hearing today.

2. This is an appeal filed by the State under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the judgement and award passed by the Reference Court under section 18 of the said Act.

3. We have heard the learned counsel for the respective parties and have perused such oral and documentary evidence on record to which our attention has been drawn.

4. Apart from other evidentiary material on record which the Reference Court has discussed in detail, it is found that ultimately the Reference Court has relied upon three decisions of this Court at Exhs.97, 99 and 100. These are decisions rendered by the High Court in appeals under section 54 of the Act, which arose from land reference cases determined by the Reference Court, in respect of acquisition of lands for the very same project and situated in the instant village Bhamaria, as also the adjoining village Ghariyar.

5. The Reference Court ultimately found, and in our opinion rightly so, that the High Court decision confirming the market value determined by the Reference Court in respect of the acquisition from the village Bhamaria is very appropriate inasmuch as it is acquisition of land from the very same village and also because the notification in that case is of the year 1981, as also in the instant acquisition.

5.1 This decision of the High Court is therefore made the basis of the determination of market value by the Reference Court at Rs.10.35ps per square meter.

6. The Reference Court has thereafter, after appreciating the relevant material evidence on record, added an increment of 25% to the market value determined by the High Court inasmuch as the earlier acquisition from this village dealt with by the Reference Court in the earlier reference and confirmed by this Court pertained to non-irrigated lands, whereas in the instant case admittedly the lands are irrigated lands. Learned

counsel for the appellant was unable to justify any increment smaller than 25% which could be the basis of the difference in fundamental nature and quality of the land. For this reason when the Reference Court ultimately determined the market value of the lands at Rs.12.35ps per square meter, we find that the same is entirely in consonance with the evidence on record and cannot in any manner be said to be excessive so as to justify interference by way of the present appeal.

7. Another contention raised by learned counsel for the appellant is in the context of the compensation granted by the Reference Court in respect of the pipelines installed by the land-holder for the purpose of irrigating the lands under acquisition, and incidentally, out of which other income was also raised by selling water to adjoining farmers. The basic principle of allowing 25% increment for irrigated lands over the market value determined by the High Court in respect of non-irrigated lands is that irrigated lands obviously have a better and higher yield in terms of agricultural crops, and also the possibility of one or two additional crops per year than compared to non-irrigated lands. It is for this reason that the irrigated lands are valued at higher figure. What requires to be noted is that this higher valuation is achieved on account of the existence of only one factor viz. provision for irrigation which has been made by the land-holder himself. Thus, whatever may have been the input or costs of providing this irrigation, is reflected in the higher market value, and if it is this higher market value which is awarded to the land-holder, separate compensation cannot be awarded for the cost of provision or installation of the irrigation facilities. For this reason, on a question of principle, the additional compensation for provision of pipelines valued by the Reference Court at Rs.1,97,000/- is not justifiable. It is so held and accordingly directed that this amount of Rs.1,97,000/- shall be deducted from the compensation payable to the original claimant in respect of the land value.

8. Another contention raised by the learned counsel for the appellant is as regards the interpretation of the final order, which according to him grants interest on solatium. This contention would be justified if the final order is read only in a particular manner. However, it is not necessary to enter into this possible discrepancy on account of the statement made by learned counsel for the respondent-claimant (with due instructions from the party who is present in court) to the effect that he does not claim interest on solatium.

If, therefore, the final order is ambiguous in this respect, it is clarified that no interest is payable on the amount of solatium.

9. In the premises aforesaid, we find that there is no reason to interfere with the market value as determined by the Reference Court and the same is therefore confirmed. However, the respondent-claimant shall not be entitled to compensation in the sum of Rs.1,97,000/- for pipelines, etc., and shall not be entitled to interest on the amount of solatium.

10. Subject to the aforesaid observations and directions, there is no substance in the present appeal and the same is accordingly partly allowed with no order as to costs.

11. Decree accordingly.

12. We are required to take note of an earlier order passed by this very Bench in Special Civil Application No.8639/2000 dated 22nd November 2000 whereby this very same claimant (respondent) was required to file an undertaking in this court to the effect that "she will not accept or withdraw any compensation (upto the extent of Rs.6 lacs) which may be due to her in respect of the acquisition which is the subject matter of Land Reference Case No.361/92" i.e. the subject matter of the present appeal. We are informed that the undertaking is being filed today. Accordingly we direct that whatever be the total amount of compensation inclusive of statutory allowances, due and payable to the present respondentclaimant, may be disbursed to her, except for the sum of Rs.6/- lacs. It is clarified that orders as to disbursement or otherwise as to this amount of Rs.6/lacs may be obtained from the Reference Court dealing with the reference, contemplated in para 1[C] of our aforesaid order in the SCA.

13. It is expected that the amount of compensation payable to the respondent-claimant under the present judgement and decree shall be deposited in the Reference Court or paid to the claimant as expeditiously as possible and preferably within three months from today.

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